

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **VICE CHAIRMAN AL BISHOP**, on March 19, 1999 at 9:04 A.M., in Room 420 Capitol.

ROLL CALL

Members Present:

Sen. Al Bishop, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Duane Grimes (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter McNutt (R)

Members Excused: Sen. Lorents Grosfield, Chairman (R)

Members Absent: None.

Staff Present: Delila Croucher, Committee Secretary
Valencia Lane, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 255, HB 296, HB 361, HB 396

Executive Action: HB 296, HB 361, HB 255, HB 81,
HB 283

HEARING ON HB 255

Sponsor: REP. SHEILL ANDERSON, HD 25, Park County

Proponents: Dennis Paxinos, Yellowstone County Attorney
Marty Lambart, Gallatin County, County Attorney's
Association

Elizabeth Horseman, County Prosecutor's Bureau
Mike McGrath, County Attorney

Opponents: Robert Throssell, MT Magistrates Association

Opening Statement by Sponsor:

REP. SHEILL ANDERSON opened on the bill. This bill addresses property crimes of criminal mischief, arson, theft, failure to return rented properties, unlawful use of a computer, unauthorized acquisition of food stamps, medicaid fraud, issuing bad checks, deceptive facts, and false claims to a public agency. What is happening now, because of our limits, is that a lot of property crimes end up in district court. Currently, our district courts are plugged up. Due to this, some property crimes get pushed back and back, the result of which is that the victims don't get their day in court, at least not in a timely manner. What this bill would do, is put some of the cases into the city courts and the J.P. courts. These lower courts are more creative in their sentencing, they are more likely to award jail time, and they are more likely to award restitution for property crimes. This bill has been referred to as the cost of living adjustment for criminals. It will raise the limit from \$500 to \$1000 and relieve some of the pressure on district courts.

{Tape : 1; Side : A; Approx. Time Counter : 0 - 3.3}

Proponents' Testimony:

Dennis Paxinos, Yellowstone County Attorney, rose in support of the bill. The district courts are heavily burdened with case loads and this bill will help alleviate the courts. In addition, a greater sense of relief to victims will come out of this bill. We are seeing felons on too frequent of a basis and would be better handled on a misdemeanor level. It would be more appropriate to deal with felons once they have committed \$1000 worth of damage or more.

{Tape : 1; Side : A; Approx. Time Counter : 3.3 - 6.9}

Marty Lambart, Gallatin County Attorney, rose in support of the bill. This bill would lead to far quicker resolution to these cases. Shorter time frames tend to please victims. Offenders are far more apt to receive punishment in the lower courts as well.

{Tape : 1; Side : A; Approx. Time Counter : 6.9 - 10.2}

Elizabeth Horseman, County Prosecutor's Bureau, rose in support of the bill. Research across the state shows that 20-30% of property crimes would be affected by this bill, therefore reducing the number of cases processed before the district

courts. For a lot of victims that fall in the lower dollar value amounts, district courts take a long time to deal with their cases because they are a low priority. This bill does not effect domesticated animal cases or burglary. This bill may ultimately reduce the number of cases that go to the Supreme Court.

{Tape : 1; Side : A; Approx. Time Counter : 10.2 - 11.8}

Mike McGrath, Lewis and Clark County Attorney, rose in support of the bill. The number of felony cases filed has tremendously grown during his time as an attorney. The reason for that is not necessarily increased crime, although it has. Law enforcement has become a lot more effective in terms of apprehending offenders. We have also had a lot of laws that have been changed over the years, increasing the work load on district courts. This bill would help the district court. It does not impose a burden on the lower courts because cases have been shifting out of their care over the years.

{Tape : 1; Side : A; Approx. Time Counter : 11.8 - 13.7}

Opponents' Testimony:

Robert Throssell, Montana Magistrates Association, rose in opposition of the bill. The additional caseload imposed on the lower courts is a concern within the association. The general workload across the state is increasing. The division of that labor between the district courts and the magistrate courts is a concern. Each increase is not a basis to oppose changes. The practical effect is that the burden of the district court now is being shifted to the magistrates. Over time that will increase their workload.

{Tape : 1; Side : A; Approx. Time Counter : 13.7 - 16.2}

Questions from Committee Members and Responses:

SEN. BARTLETT asked if the bill addresses civil penalties for shoplifting. **Mr. McGrath** said that it should not be a problem. Existing statute is consistent with the changes made by this bill.

SEN. BARTLETT asked if juvenile shoplifters are handled under criminal provisions. **Mr. McGrath** said that they are handled through the youth court but these statutes would apply. The idea is to reduce future crime by showing the young offenders that there is an impact on what they do.

SEN. BARTLETT asked if statute should be changed or left alone. **Mr. McGrath** said that if the Committee were to change it, it would be consistent with the passage of the bill. **SEN. BARTLETT** asked if the statute contains a section that states that

anything with a penalty of \$500 or six months in jail or less, is a misdemeanor, anything greater is a felony. **Mr. McGrath** said that there is a provision that distinguishes between felonies and misdemeanors. It pertains to the amount of time that a person can be incarcerated. If someone can be incarcerated for a year, then it is a felony. Less than a year is considered a misdemeanor.

SEN. BARTLETT asked what the impact of this bill will be on the justice court. **Mr. McGrath** said that he does not think the justice courts will be outweighed by this bill. Many of the cases that fall within this property range get settled in justice court anyway. **SEN. BARTLETT** asked if the counties receive any reimbursement from the state for the cost of the justice courts. **Mr. McGrath** said he is not sure but he believes so. There are defense costs, expert witness costs, are reimbursable.

{Tape : 1; Side : A; Approx. Time Counter : 16.2 - 23.1}

SEN. HALLIGAN asked what the impact on J.P. Courts will be. It was stated that there are too many variables to accurately estimate impact.

{Tape : 1; Side : A; Approx. Time Counter : 23.1 - 25.7}

Closing by Sponsor:

REP. SHIELL ANDERSON, closed on his bill. The district court judges are more over-burdened than the local magistrate courts.

{Tape : 1; Side : A; Approx. Time Counter : 25.7 - 28.7}

HEARING ON HB 296

Sponsor: REP. JIM SHOCKLEY, HD 61, Victor

Proponents: None

Opponents: None

Opening Statement by Sponsor:

REP. JIM SHOCKLEY opened on his bill. This bill relates to public administrators. Administrators handle probates that nobody else wants to deal with. In cases where this happens, the administrators get a percentage of the estate. Frequently, the administrator receives nothing. The administrator can also be appointed as conservator or guardian of an estate. This is happening more and more. As it is now, the most an administrator can make off of an estate is \$100 a year. In most situations it

is not a big deal. But, on occasion, the administrator handles very significant amounts of money. In the event that there is such an occasion, the judge can award more than \$100 to the administrator if he proves to the judge that he did more than \$100 worth of work. None of this money comes out of taxpayers funds. The money comes from the estates funds. If the estate has no funds, no money is awarded. This bill will allow the court, when appropriate, to award more than \$100 to the administrator.

{Tape : 1; Side : A; Approx. Time Counter : 28.7 - 32.3}

Proponents' Testimony: None

Opponents' Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

REP. SHOCKLEY closed on his bill. Getting someone to do the public administrators job is tough. In the case where a public spirited citizen is in the position to make a little bit of money, it should be so.

{Tape : 1; Side : A; Approx. Time Counter : 32.3 - 33.3}

HEARING ON HB 361

Sponsor: REP. JIM SHOCKLEY, HD 61, Victor

Proponents: None

Opponents: None

Opening Statement by Sponsor:

REP. JIM SHOCKLEY opened on his bill. Throughout the Montana Code, there is a large part that deals with liens. This bill addresses attorney fees in the lien situation, benefitting the person filing the lien. In the interest of fairness, another issue that is addressed relating to liens, is that this bill also benefits the person who is liened.

Liens are designed particularly for the small tradesman who does not receive payment for the work he does. This bill allows the tradesman to receive attorney fees only if he files in district court. If a piece of property is liened and the property owner pays right away, then attorney fees do not need to be paid. To

encourage settlement promptly, and to discourage people filing claims, in this bill when the lien is filed, in order to clear the lien the person against whom the lien is filed either has to pay the amount of the lien and the attorney fees or go to court. This bill would discourage attorneys from filing a lien and then promptly filing a complaint. The complaint filing guarantees them their fees and the cost of the person against whom the lien was filed, the filing fee in district court, plus the thirty dollar cost of service. The person against the lien is filed is actually being saved some money.

There is also an inequity in the litigation involving liens. This bill encourages people to settle. When one person liens another, and asks for more than he has coming, he is going to have to pay the fees of the person whom he liened. This will encourage people to settle.

{Tape : 1; Side : A; Approx. Time Counter : 33.3 - 41.1}

Proponents' Testimony: None

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. BARTLETT asked **REP. SHOCKLEY** to point out the section in the Montana Code that addresses settlement that says that if the lien holder does not agree, from that point forward the lien holder is responsible for the property owners attorney fees. **REP. SHOCKLEY** referred to rule 68 in the second paragraph.

{Tape : 1; Side : A; Approx. Time Counter : 41.1 - 43.3}

SEN. DOHERTY inquired what liens are actually being dealt with. **REP. SHOCKLEY** said that some of the liens addressed are construction lien, the particularities of a logging lien, and adjusters liens.

{Tape : 1; Side : A; Approx. Time Counter : 43.3 - 44.1}

Closing by Sponsor:

REP. SHOCKLEY closed on his bill.

{Tape : 1; Side : B; Approx. Time Counter : 0 - 0.3}

HEARING ON HB 396

Sponsor: REP. GAY ANN MASOLO, HD 40, Broadwater County

Proponents: REP. EDITH CLARK, HD 88, Toole County

Patrick Holt, Citizen
REP. JOE MCKENNY, HD 49, Cascade County
Sammy Yewusiak, Western Montana Fair
Reed Williams, Amusement Industry

Opponents: **Al Smith, Montana Trial Lawyers**

Opening Statement by Sponsor:

REP. MARK NOENNIG, HD 9, opened on the bill in place of **REP. MASOLO.** The bill addresses the regulation of the behavior of passengers on amusement rides. The purpose is to promote the industries willingness to make sure there are protections and specifications on both the operator and the passengers of amusement rides. When this bill was in the House Committee an amendment was added that dealt with the responsibilities of individuals fifteen years of age or older. That provision was added with intentions of addressing the responsibility of individuals fifteen years of age. However, some believe that it goes a bit too far because it has a conclusive assumption that those individuals assume the risk of an ordinary person. The law currently defining the responsibility of people in a similar circumstance and their need to assume risk is sufficient without this additional language.

{Tape : 1; Side : B; Approx. Time Counter : 0.3 - 2.9}

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Proponents' Testimony:

REP. EDITH CLARK, HD 88, Toole County, rose in support of the bill. The carnivals that comes to Toole County are reliable and astute business men. She is assured of the safety of children riding on these rides. Public safety is an utmost concern. These carnivals contribute to the economy of small towns across the state.

{Tape : 1; Side : B; Approx. Time Counter : 2.9 - 6.5}

Patrick Holt, rose in support of the bill. **Mr. Holt** was involved in the original drafting of this bill. The value of the carnival industry in Montana is great. The reason for this bill, and the proposal of it, is amusement ride safety. It is an issue that is largely ignored in many states and is minimally regulated in some. There is no current Montana law that directly addresses rider safety. This statute is inclusive of mobile amusement rides and the traveling carnival industry. All operators, as defined by this statute, are bound by the same level of responsibility for rider safety.

This language is intended to provide a level of protection, certainty, and clarification in an area of law that is devoid of

statutory guidance. Montana has long recognized that there are certain activities that people engage in that have inherent risks. In other cases around the state, such as skiers, snowmobilers, and outfitters, the legislature has recognized the need for placing the participants in a position to assume responsibility for his own actions. This bill follows that same line of reasoning when it places a reasonable safety standard on the operators to make sure that the rides are mechanically and operationally safe, while at the same time, it recognizes that the riders must conduct themselves within reasonable parameters to ensure their own safety and the safety of others.

There are numerous incidents illustrating that riders cause the great majority of ride injuries. This is a reasonable step to take in order to save lives and prevent accidents. There are now at least ten states with some form of statute or regulations that regulate the amusement ride safety and responsible rider conduct. The fundamental issue at hand is safety. It is not taking away riders rights. The bill is intended to follow the lead of other states and provide statutory language that sets guidelines for rider safety. It imposes a safety standard on the operators to ensure the riders safety in the construction, setting up, maintenance and operation of amusement rides.

In addition, the operator must ensure that there is adequate staff for a first aid station. Likewise, the bill addresses what is considered to be responsible conduct on the part of riders. This is a common sense approach to defining and governing the respective rights of the riders, the amusement industry and the general public's use and enjoyment of those rides.

{Tape : 1; Side : B; Approx. Time Counter : 6.5 - 13.7}

REP. JOE MCKENNY, HD 49, Cascade County, rose in support of the bill. This bill is not about relieving liability on unsafe rides. This bill is about relieving liability from unsafe customers. Without this bill, unsafe customers are putting themselves and others in harms way and holding the carnival liable.

{Tape : 1; Side : B; Approx. Time Counter : 13.7 - 16.6}

Sammy Yewusiak, Western Montana Fair, rose in support of the bill.

{Tape : 1; Side : B; Approx. Time Counter : 16.6 - 17.5}

Reed Williams, Inland Empire Shows, rose in support of the bill. His company is very safety orientated. There are daily safety inspections, weekly safety hearings, on-site random drug testing, cash bonus' for turning in anyone using or selling drugs. The problem is not amusement ride safety and the point of this bill

is not to take away liability for an unsafe amusement ride. The point of the bill is to eliminate rider caused claims. There has been a tremendous increase in the recent years for rider caused claims. The Consumer Product Safety Commission, which tracks amusement ride injuries, claims that over 75% of amusement ride claims are caused by rider misconduct. Equipment and operational costs have escalated faster than the ability to increase gross and further the companies net income. When the insurance companies pass the rider caused claims down to the company, it effects the ability of the company to contribute to the fairs. Passage of this bill would make Montana the 16th state with a rider responsibility law.

{Tape : 1; Side : B; Approx. Time Counter : 17.5 - 21.4}

Opponents' Testimony:

Al Smith, Montana Trial Lawyers, rose in opposition of the bill. A lot of the talk on this bill has revolved around public safety. The concern with this bill rests with a young child's ability to know their abilities and the effects they may have on others. Another problem with the bill is determining what age a child is responsible and it is good that this provision is being looked at. Some people have mental retardation, brain injuries or so forth, making their mental age much different than their chronicle age.

There is a concern with the need to limit liability. One question that this bill brings up is the definition of a passenger. It is inclusive of someone leaving the immediate vicinity of an amusement ride. This is overly broad. If a part came off the ride and struck someone walking by, would you be aware that you may lose your legal rights if you do not report immediately. If the provision of sign requirements must stay in the bill, they should be available for everyone to see. This bill does not include penalties or fines for operators under the influence.

The main concern with the bill is with the reporting part. Limiting a persons rights as to what they can recover in damages if they get injured has nothing to do with safety. This is a punitive aspect of the bill. The bill does not allow for individuals that leave the fairground without reporting their injury. In the case of children, they would be required to understand that they must report an injury immediately or they will lose their rights. In a failure to report, the damages recoverable are left to just medical costs. Lost wages, disfigurement, pain and suffering, and nothing for disability are included in this bill. The limitations do not need to be included and the bill will still be effective as far as the safety concerns.

The bill does not need to have limitations on a persons right to recover. Operator responsibilities, passenger responsibilities and injury reports are a good idea. Making specific guidelines can hurt the legitimate injury case because they may not have followed the rules specifically. This protects out of state carnival operators at the expense of Montanans, especially children. **EXHIBIT(jus62a01)**

{Tape : 1; Side : B; Approx. Time Counter : 21.4 - 43.8}

Informational Testimony:

SEN. DALE MAHLUM, SD 35, Missoula, rose to give informational testimony on the bill. The people that work for a carnival hold safety meetings, and focus on what is good for the consumer. The carnivals that come into Missoula are great because they are so safety conscience in regards to what is best for the people.

{Tape : 2; Side : A; Approx. Time Counter : 0 - 3.1}

Questions from Committee Members and Responses:

SEN. BARTLETT asked if amusement rides that set up in shopping center parking lots are members or tied into the Rocky Mountain Association of Fairs. **Sammy Yewusiak** said that when carnivals set up in shopping centers they are normally the same carnivals that put on fairs. **SEN. BARTLETT** asked if the parking lot carnivals market more toward younger children. **Mr. Yewusiak** said that the fairs he is familiar with have a mixture of rides for both younger and older children. **SEN. BARTLETT** asked if the operators of those kind of amusement rides are Montana operators that are tied into the Rocky Mountain Association of Fairs. **Mr. Yewusiak** responded saying that to the best of his knowledge that is the case.

{Tape : 2; Side : A; Approx. Time Counter : 3.1 - 5.4}

SEN. DOHERTY asked if the bill is about safety, why don't we strike the section dealing with reporting. **Mr. Holt** said that the section dealing with reporting has some value in that it encourages reporting. If the time line is a problem, move it out. If the penalty is a problem, remove it. The bill encourages the reporting of any unsafe condition on any amusement ride. That way, the operator is on notice that a problem exists and gives them an opportunity to correct it. It also solidifies, to a degree, whether or not there was an injury that may or may not be compensational down the road. **SEN. DOHERTY** asks who would be held responsible in a case where a child gets on a ride with an object that could hurt another individual. **Mr. Holt** said that under the way the bill is written, the operator can be held liable. The intent of the bill is not to develop a force field

for liability for the carnival operator. The idea behind this was that the fairs and the small communities recognize the need to have carnivals in their communities in order to have their fairs. The desire is to create something that lend some certainty and puts some guidelines down for both the carnival operators and the public at large. **SEN. DOHERTY** said that a kid who is injured and walks off of the premises loses his rights.

{Tape : 2; Side : A; Approx. Time Counter : 5.4 - 11.5}

SEN. JABS asked if individuals are alcohol impaired and riding these rides, how would liability work. **Reed Williams** said that what is done in his case is that they have an operating book that set safety regulations. In that book, drugs and alcohol are addressed. The best thing for operators to do, is not try to confront an intoxicated individual, but rather get security. Drugs are harder to address because it usually takes someone who is qualified in that field notice the indications of someone who is on drugs. When there is alcohol on fairgrounds, there are going to be people who drink. Sooner or later, someone will get on an amusement ride who has been drinking. **SEN. JABS** asked if there are certain rides that children have to be a certain age in order to ride. **Mr. Williams** said that there are height regulations on almost every ride.

{Tape : 2; Side : A; Approx. Time Counter : 11.5 - 15.4}

SEN. HALLIGAN asked how this bill is applicable to young children. **Mr. Williams** said that this bill states that the guidelines for reporting start at fifteen years of age. Reporting of a young child would be by a parent or guardian. There was never any intent to restrict anyone under fifteen.

{Tape : 2; Side : A; Approx. Time Counter : 15.4 - 18.1}

SEN. JABS asked if identification would have to be presented in order to establish a child's age. **Mr. Williams** said that the age factor is an after-the-fact determination.

{Tape : 2; Side : A; Approx. Time Counter : 18.1 - 19.6}

SEN. MCNUTT asked how many incidences **Mr. Reed** has had where litigation or problems with injury in the operation of his show in the last few years occurred. **Mr. Reed** estimated six cases.

SEN. MCNUTT asked if this number seemed to be on the increase. **Mr. Reed** said that what he sees is that the rider caused claims have increases. Over the last fifteen years there has been a big push for safety and presentation of carnivals. In the reporting area, cases have popped up months after the carnival is out of town, and no record whatsoever of the people attending the fairs are know.

{Tape : 2; Side : A; Approx. Time Counter : 19.6 - 23.4}

SEN. GRIMES asked if false injury reports are being generated more frequently. Mr. Reed said that it does occur. More claims that the carnival knows absolutely nothing about have risen over the past five years.

{Tape : 2; Side : A; Approx. Time Counter : 23.4 - 26.9}

Closing by Sponsor:

REP. NOENNIG closed on the bill

{Tape : 2; Side : A; Approx. Time Counter : 26.9 - 27.1}

EXECUTIVE ACTION ON HB 296

Motion/Vote: SEN. HALLIGAN moved that HB 296 BE CONCURRED IN. Motion carried 6-0.

{Tape : 2; Side : A; Approx. Time Counter : 27.1 - 28.4}

EXECUTIVE ACTION ON HB 361

SEN. BARTLETT noted that on the face of the bill it does not make sense why some liens are included and some are not. No action was taken.

{Tape : 2; Side : A; Approx. Time Counter : 28.4 - 29.9}

EXECUTIVE ACTION ON HB 255

SEN. BARTLETT asked for an amendment to put the civil issue in at the same rates. No action was taken.

{Tape : 2; Side : A; Approx. Time Counter : 29.9 - 34.1}

EXECUTIVE ACTION ON HB 283

Motion/Vote: SEN. DOHERTY moved that HB 283 BE CONCURRED IN. Motion carried 7-0.

EXECUTIVE ACTION ON HB 81

Motion/Vote: SEN. HALLIGAN moved that AMENDMENT HB008101.av1 BE CONCURRED IN. Motion carried 6-0. EXHIBIT(jus62a02)

Motion/Vote: SEN. HALLIGAN moved that HB 81 BE CONCURRED IN AS AMENDED. Motion carried 6-0.

DISCUSSION ON HB 115

SEN. BARTLETT explained the amendments she is suggesting for HB 115. They do two things. One, the amendments completely remove unconditional discharge. Two, the amendments eliminate the changes in deferred sentencing. Deferred sentences, under this bill, would be available for someone up to five years after they have originally been sentenced.

{Tape : 2; Side : A; Approx. Time Counter : 36.5 - 41.1}

SEN. HALLIGAN asked **Mike Ferriter** what the Departments take on the amendments are. **Mr. Ferriter** said that he just received them. From the departments standpoint, the conditional and the unconditional discharge, is an issue. At times there are offenders that do a good job under supervision and this would give them an opportunity to be discharged early. It is something that more than likely will happen rarely. This is a piece of the bill that is not extremely significant to the Department. As far as the deferred, there are some offenders that go through the boot camp and it has been an option for them to go into the military. This is a piece that offenders could really benefit from.

{Tape : 2; Side : A; Approx. Time Counter : 41.1 - Tape : 2; Side : B; Approx. Time Counter : 3.5}

SEN. BARTLETT asked if the deferred imposition of sentence is left in the bill, why does it have to be that an offender could apply to the court up to five years, not less. **Mr. Ferriter** said that there are offenders who have not made it through a one year requirement. **SEN. BARTLETT** asked how many people are currently finishing a sentence under conditional discharge. **Mr. Ferriter** estimated two or three-hundred at the most.

{Tape : 2; Side : B; Approx. Time Counter : 3.5 - 9.1}

ADJOURNMENT

Adjournment: 11:25 A.M.

SEN. AL BISHOP, Vice-Chairman

Delila Croucher, Secretary

AB/DC

EXHIBIT (jus62aad)